

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

v.

AYALA, Correction Officer,

Defendant.

20-CV-0840 (KMK)

ORDER OF SERVICE

KENNETH M. KARAS, United States District Judge:

Plaintiff, currently incarcerated in Sing Sing Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendant violated his federal constitutional rights.<sup>1</sup> By order dated February 5, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of

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<sup>1</sup> The events giving rise to Plaintiff's claim occurred while he was incarcerated at Green Haven Correctional Facility.

time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendant Correction Officer Edwin Ayala through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for this defendant.<sup>2</sup> The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

Plaintiff must notify the Court in writing if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so.

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court's website under "Forms" and are titled "[Plaintiff's Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents](#)." Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.<sup>3</sup>

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<sup>2</sup> The New York State Office of the Attorney General provided Officer Ayala's first name and service address by letter dated December 16, 2020. (ECF 10.)

<sup>3</sup> If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

### CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Clerk of Court is further instructed to issue a summons, complete the USM-285 form with the address for Green Haven Correction Officer Edwin Ayala, and deliver to the U.S. Marshals Service all documents necessary to effect service.

Finally, the Clerk of Court is directed to add Green Haven Correction Officer Edwin Ayala's first name to the caption of the case on the Court's docket.

SO ORDERED.

Dated: January 4, 2021  
White Plains, New York



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KENNETH M. KARAS  
United States District Judge

**DEFENDANT AND SERVICE ADDRESS**

Correction Officer Edwin Ayala  
New York State Department of Corrections and Community Supervision  
Office of Counsel, The Harriman State Campus  
1220 Washington Avenue, Albany, New York 12226.